



# FACT SHEET

## Information for Potential Small Entity\* Representatives to the Small Business Advocacy Review Panel Process

\* For the purposes of the Small Business Advocacy Review Panel process, **small entity includes small businesses, small governments and small non-profit enterprises.** The term “small business” is defined by law in the Small Business Act and the terms “small government and small non-profit” are defined by law in the Regulatory Flexibility Act (more detail inside).

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## What is an EPA small entity representative?

An EPA Small Entity Representative (SER) is an individual chosen by the Agency as a participant representative of small entities likely to be directly regulated by a particular proposed rule under development. The Regulatory Flexibility Act defines small entities as small businesses, small governments, and small non-profit enterprises (more detail below).

If you are selected as a Small Entity Representative, we will ask you to provide comments on behalf of your company or organization to a specific Small Business Advocacy Review Panel considering a particular rule. Your participation in the rulemaking process will ensure that EPA hears small entities' concerns.

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## Why does EPA need small entity representatives?

EPA has an ongoing commitment to minimize the burden of our regulations on small entities to the extent feasible while still meeting our statutory requirements. The Small Business Regulatory Enforcement Fairness Act (SBREFA), passed in March 1996, amended the Regulatory Flexibility Act (RFA) to further the Agency's partnerships with small entities in our rulemakings. One of the important goals of the RFA, as amended by SBREFA, is to provide small entities with an expanded opportunity to participate in the development of certain regulations.

In particular, EPA must convene a Small Business Advocacy Review Panel for certain rules under development, unless the Agency determines that the rule will not impose a significant economic impact on a substantial number of small entities. Each Panel includes representatives from the Small Business Administration, the Office of Management and Budget, and EPA. The Panel conducts outreach to **individuals representative of small entities** likely to be subject to the rule and prepares a report on each rulemaking to the Administrator of EPA on the potential small entity impacts of the rule and on potential ways to reduce those impacts. The goal of the Small Business Advocacy Review Panel process is to explore ways of minimizing significant burdens on regulated small entities while achieving the public purpose to be served by regulation.

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## Who is eligible to be a small entity representative?

You are eligible to be a small entity representative if you meet the definition of small (either as a business, government or non-profit organization) as defined by law and are directly subject to the particular regulation under development. The RFA/SBREFA references the definition of "small business" found in the Small Business Act, which authorizes the Small Business Administration (SBA) to further define "small business" by regulation. The SBA's small business definitions are codified at 13 CFR 121.201. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school

district or special district with a population of less than 50,000. Further, "small organization" is defined as any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

We prefer that small entity representatives be owner-operators of small businesses, officials from small governmental jurisdictions or managers of non-profit enterprises potentially subject to the rule. If such representatives are unavailable, other individuals, such as persons from trade associations that exclusively or primarily represent potentially regulated small entities may serve as small entity representatives. Other persons who wish to act as small entity representatives will be evaluated on a case by case basis.

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## **Who chooses small entity representatives?**

For each rule that may have a significant economic impact on a substantial number of small entities, the EPA program office responsible for the rule identifies what types of small entities are likely to be directly regulated and works in partnership with other Agency offices in developing a list of potential small entity representatives. Through the Agency's Small Business Advocacy Chair, the program office also consults with the SBA Chief Counsel for Advocacy to identify individuals to serve as small entity representatives. Based on these recommendations, official small entity representatives are appointed by the Small Business Advocacy Chair.

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## **At what stage in the rulemaking does the Panel process occur?**

Prior to proposing a rule we engage you, our stakeholders, in a dialog to inform you of our plans and to learn about your ideas and concerns regarding a rule under development. If our preliminary assessment of the potential impacts of the rule indicates that we may not be able to certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, EPA will initiate the Small Business Advocacy Review Panel process. This process is intended to provide a special opportunity for small entities to participate in the rulemaking under the provisions of RFA/SBREFA.

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## **What will being a small entity representative entail?**

Generally, prior to the convening of a Panel and during the Panel's 60 day term, as a small entity representative to the federal Panel, you will be asked to review background information, listen to informational briefings and provide oral and written comments to the Agency and the Panel.

Typically, prior to the convening of a Panel, which consists of only federal employees as specified by law, the EPA program office responsible for the development of the rule will provide you with some background information on the rule and ask for your feedback. The program office, in coordination with EPA's Small Business Advocacy Chair, may also arrange a meeting with small entities potentially subject to a particular rule to hear your (individual) initial concerns and suggestions. Representatives of OMB and SBA are also invited to this meeting.

After the Panel is convened, the Panel will provide you with some additional information and some specific questions, followed by a teleconference or a face-to-face meeting to give you the opportunity to communicate directly with the Panel members and provide oral comments. The Panel also generally requests small entity comments in writing. The goal of this consultation is to provide a forum for small entities to raise issues of concern and to provide the Panel with insight into technical issues and potential ways of approaching them.

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## What will be done with my small entity input?

Each Small Business Advocacy Review Panel considers all small entity comments in addition to other rule-related material prepared by the program office and, within the 60 days provided by statute, prepares a report on the rulemaking to the Administrator of EPA on the potential small entity impacts of the rule and on potential ways to reduce those impacts. The Panel report will be considered by the Agency as it decides the content of the proposed rule. All written small entity comments are appended to the Panel report. Of course, after publication of the proposed rule in the Federal Register, you will have an additional opportunity to submit comments during the standard public comment period.

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## Where can I get more information?

Several EPA documents are available that can provide more information on the Regulatory Flexibility Act, the Agency's small entity compliance assistance efforts and the elements of a regulatory flexibility analysis. These documents and further assistance with any RFA/SBREFA questions are available from the staff of the Small Business Advocacy Chair.

### **EPA Small Business Advocacy Chair**

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